

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KEVIN JEFFERSON,

Plaintiff, ORDER
08-CV-0204 (JS) (ARL)
-against-

JANE DOE, et al.,

Defendants.

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APPEARANCES

For Plaintiff: Kevin L. Jefferson, pro se
08-R-2861
Downstate Correctional Facility
Box F
Red Schoolhouse Road
Fishkill, NY 12524-0445

For Defendants: Brian C. Mitchell, Esq.
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P.O. Box 6100
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SEYBERT, District Judge:

By order dated July 14, 2011, the Court of Appeals dismissed Plaintiff's appeal but remanded this case for a determination whether language in the Notice of Appeal may be construed as a motion for an extension of time to file a notice of appeal.

The Court is aware that it "may no[t] . . . treat an untimely notice of appeal as an application for an extension of time," Carter v. Jones, No. 86-CV-0359, 1987 WL 19426, at *1 (E.D.N.Y. Oct. 26, 1987) (citing Campos v. LeFevre, 825 F.2d

671, 676 (2d Cir. 1987)), however "[a]ny submission signed by a party that may fairly be read as a request to the district court to exercise its discretionary powers to permit a late appeal should suffice," Campos, 825 F.2d at 676. Here, although the Notice of Appeal does not explicitly request an extension, Plaintiff explains that he has been in transit with limited access to the law library and "request[s] that the Court excuse any procedural shortcoming" in "deem[ing] [his December 1, 2010 letter] an appropriate notice of Plaintiff's intent to appeal to the Second Circuit." (Docket No. 109 at 1-2, 5.) The Court will, therefore, construe the letter as a motion for an extension of time within which to file the notice of appeal.

As the "motion" was filed within 30 days after the time prescribed for the filing of the notice of appeal, the Court has the power to grant an extension until the later of thirty [30] days after the prescribed time or fourteen [14] days after the date when the order granting the motion is entered. FED. R. APP. P. 4(a)(5). Accordingly, the motion is granted and the time for filing the notice of appeal is extended to and including the fourteenth day after the date on which this Order is entered.

SO ORDERED.

Dated: September 13, 2011
Central Islip, New York

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.